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**SEP 27 2005**

**OFFICE OF PETITIONS**

In re Application of :  
Gilbert et al. :  
Application No. 09/876,813 : DECISION ON APPLICATION  
Filed: June 6, 2001 : FOR  
Attorney Docket No. 99-19D1 : PATENT TERM ADJUSTMENT  
:

This is a decision on the "Application for Patent Term Adjustment Correction" filed May 19, 2005 (certificate of mailing dated May 12, 2005). Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from three hundred seventy-seven (377) days to four hundred nineteen (419) days.

The application for patent term adjustment is **DISMISSED**.

On February 16, 2005, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is 377 days. The instant application for patent term adjustment was timely filed<sup>1</sup>. Applicants request an additional period of adjustment of 42 days for Office delay in not mailing a response under § 132 to their response filed November 3, 2003 until April 14, 2004. However, applicants acknowledge that the response as filed was non-compliant.

Applicants' argument is not well taken. In response to the amendment filed November 3, 2003, the Office mailed a Notice of

<sup>1</sup> PALM records indicate that the Issue Fee payment was received on May 16, 2005, after the certificate of mailing date of the instant application for patent term adjustment.

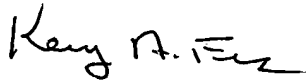
Non-compliant Amendment on November 20, 2003. Applicants filed a compliant amendment on December 15, 2003. In response to and within four months of the filing of the compliant amendment, the Office mailed a non-final Office action on April 14, 2004. Accordingly, it is concluded that there was no Office delay in taking action within the meaning of 1.703(a)(2).

In view thereof, the correct determination of patent term adjustment at the time of the mailing of the Notice of Allowance is three hundred seventy-seven (377) days.

The Office acknowledges receipt of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The Office will forward the file to the Office of Patent Publication for issuance of the patent.

Telephone inquiries specific to this matter should be directed to Nancy Johnson, Senior Petitions Attorney, at (571) 272-3219.

A handwritten signature in black ink, appearing to read "Kery A. Fries". The signature is written in a cursive, flowing style.

Kery A. Fries  
Senior Legal Advisor  
Office of Patent Legal Administration  
Office of Deputy Commissioner  
for Patent Examination Policy